

Serial No.: 10/549,323
Atty. Docket No.: LNK-007
Response of May 21, 2009

REMARKS

Herewith, claims 2 and 8 are canceled and claims 1 and 7 are amended. Accordingly, pursuant to the entry of the instant amendment, claims 1, 3-7, 9-11 and 15-19 are presently pending.

At the outset, Applicants wish to thank Examiners Clark and Tate for taking the time to review and discuss Applicants' proposed response. As mentioned in the telephonic interview of April 14th, Applicants submit that the instant amendments render moot the outstanding grounds of rejection and place the instant application in condition for allowance. In particular, in an effort to expedite prosecution and simplify the issues at hand, Applicants have herewith amended claims 1 and 7 to recite a method of "reducing a lesion of cerebral tissue" induced either by "cerebral ischemia, wherein the cerebral ischemia occurs as the result of apoplexy" (claim 1) or by "a cranial/brain trauma or a short-term cerebral ischemia resulting from apoplexy or cardiac infarction" (claim 7). Support for the new claim language is found in the application as originally filed, particularly at p. 17, lines 12-18 and p. 19, lines 4-6.

Thus, Applicants respectfully submit that no new matter has been added. However, Applicants reiterate that the instant amendments are presented solely for the purpose of expediting prosecution and should not be construed as Applicants' agreement with or acquiescence to the grounds of rejection previously set forth.

Turning to the outstanding Final Office Action of January 23, 2009:

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1-11 and 15-19 stand finally rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement, more particularly for failing to enable the “treatment” of “all” types of cerebral ischemia, arising from “any” cause or source, including those that arise from apoplexy. However, from the comments found at p. 5, lines 1-3, of the final office action and p. 5, lines 17-19, of the previous non-final office action, it appears that the Examiner has acquiesced to the enablement of a method of “decreasing” or “mitigating” damage resulting from cerebral ischemia. Accordingly, to advance prosecution, Applicants have amended claims 1 and 7 to recite a method of “reducing a lesion of cerebral tissue” induced either by “cerebral ischemia, wherein the cerebral ischemia occurs as the result of apoplexy” (claim 1) or by “a cranial/brain trauma or a short-term cerebral ischemia resulting from apoplexy or cardiac infarction” (claim 7). Applicants respectfully submit that such a method is fully enabled by the instant specification and therefore petition for reconsideration and withdrawal of the outstanding enablement rejection in view of the amendments to the claims and the remarks herein.

Rejections under 35 U.S.C. § 102 and 103

Claims 1, 3, 4, 7-9, and 16-19 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by Etzel (USPN 5,720,975) and claims 1, 3-11, and 15-19 stand finally rejected under 35 U.S.C. § 103(a) as being obvious over Etzel ('975) in view of Badria et al. (Z. Naturforsch, 2003). While the primary reference (Etzel) arguably discloses a method of treating Alzheimer's disease, Applicants respectfully submit it fails to anticipate or render obvious a method of treating cerebral ischemia, more particularly a method of treating a cerebral ischemia resulting from apoplexy (pending claim 2, excluded from prior art rejections). In any event, to advance prosecution, Applicants have canceled all references to “Alzheimer’s disease” and amended the pending claims to refer to either a “method of reducing a lesion of cerebral tissue induced by

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cerebral ischemia, wherein the cerebral ischemia occurs as a result of apoplexy" (claim 1) or a "method of reducing a lesion of cerebral tissue induced by a cranial/brain trauma or a short-term cerebral ischemia resulting from apoplexy or cardiac infarction". Applicants respectfully submit that such a method is neither anticipated nor rendered obvious by the prior art of record therefore petition for reconsideration and withdrawal of the outstanding prior art rejections in view of the amendments and remarks herein.

CONCLUSION

The outstanding Office Action set a three-month shortened statutory period for response, response being due on or before **April 23, 2009**. In that the Petition for a One-Month Extension of Time extends this deadline to on or before **May 26, 2009**, Applicants respectfully submit that this response is timely and no additional fee is required. However, in the event that further fees are required to enter the instant response and/or maintain the pendency of this application, the Commissioner is authorized to charge such fees to our Deposit Account No. 50-2101.

If the Examiner has any questions or concerns regarding this communication, she is invited to contact the undersigned.

Respectfully submitted,

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